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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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530	7590	04/08/2004	EXAMINER	
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			VANATTA, AMY B	
			ART UNIT	PAPER NUMBER
			3765	10

DATE MAILED: 04/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/904,427

Applicant(s)

TISS ET AL.

Examiner

Amy B. Vanatta

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) 7, 11, 15-19, 29, 33 and 36-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-10, 12-14, 20-28, 30-32, 34, 35 and 43-60 is/are rejected.
- 7) ☒ Claim(s) 61 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restriction***

1. Applicant's election of Species III (Fig. 20) in Group I, Species A (Figs. 1,8) in Group II, and Species e (Fig. 20) in Group III, in Paper No. 8, is acknowledged.

Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Regarding Applicant's listing of the claims readable on the elected species, this listing appears to be erroneous in part. Specifically, the listing includes claims 7, 15, 16, 18, 19, 29, and 36-42. These claims are not encompassed by the elected species, because they recite that the side sections lie in a first plane and the elongated strips or holding members lie in a second plane which is spaced from the first plane. As can be seen in Fig. 20, the elongated members 142,144 lie in a first plane (curved plane 146), however the holding members 148,150 do not lie in a second plane. The holding members 148,150 are S shaped and do not lie in a plane. Instead, the specification describes them as having a first portion which lies above the plane 146 and a second portion which lies below plane 146 (page 14, paragraph 0060). No where does the specification describe these members as lying in a second plane which is space from the first plane, as in claims 7, 15, 29, and 36. It is noted that these claims read on the embodiment of Fig. 4, where a first plane 102 is shown parallel to a second plane 104

(see page 10, paragraph 0051). Thus, claims 7, 15, 16, 18, 19, 29, and 36-42 are not encompassed by the elected species and will be withdrawn as nonelected claims.

3. Also, claims 12 and 13 were omitted from Applicant's listing of claims, however these claims do read on the elected species of Fig. 20. Thus, they will be examined with the elected embodiments.

4. Thus, the correct listing of claims readable on the elected species is 1-6, 8-10, 12-14, 20-28, 30-32, 34, 35, and 43-61.

### ***Claim Objections***

5. Claim 61 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claim 61 has not been further treated on the merits.

### ***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 23-28, 30-32, 34-35, and 43-60 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 23 is indefinite in claiming the garment. Specifically, lines 1-2 recite a garment having a collar with a collar button, and then line 10 recites the collar on "a

garment"; it is unclear whether this is the previously recited garment. Also, lines 11-12 further recite "a garment having a collar and a collar button". Thus, it is unclear whether the subsequently recited garments and collar are the same as those previously recited in the claim.

Claim 26, line 5, recites "the outer face" without antecedent basis.

In claim 43, lines 11-12, the recitation "to hold the collar is positioned" renders the claim indefinite. It is unclear what is meant by this recitation.

In claim 48, line 2, the recitation "said first plane in arcuate" renders the claim indefinite. It is unclear what is meant by this recitation.

In claim 50, the recitation that *each* side section has a first arm extending in opposite directions from the center section is confusing. The arms (plural) extend in opposite directions (i.e. opposite from each other), however it is confusing and erroneous to claim that each arm (i.e. a singular arm) extends in "opposite directions". Likewise, it is confusing and erroneous to claim that each second arm (i.e. a singular arm) extends in "opposite directions". It should be more clearly claimed that the arms (plural) extend in opposite directions. Similarly, in claim 55, part (d), the recitation that said first arm and said second arm respectively on each of the side sections extend in opposite directions from the center section is confusing, since the recitation is claiming that the first and second arms extend oppositely to each other, when actually they extend in the same direction, but opposite to those on the other side. Also, in claim 57, part (c), the recitation that the first spaced arm extends in opposite directions from the center section is confusing. The arms (plural) extend in opposite directions (i.e.

opposite from each other), however it is confusing and erroneous to claim that each arm (i.e. a singular arm) extends in "opposite directions".

Claims 51, 56 and 58 are indefinite in reciting that the center section has "an attachment" for releasably connecting to the collar button. The center section does not have an "attachment" per se, but rather has a cutaway which forms an attachment means or an attachment assembly. There is no "attachment" on the center section. Thus, line 2 should recite an "attachment assembly" rather than an "attachment".

### ***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 4-6, 8, 9, 12, 23, 26-28, 30, 31, 34, and 50-60 are rejected under 35 U.S.C. 102(b) as being anticipated by Ashley (US 2,562,519).

Ashley discloses a collar protector including a body made of resilient material (col. 1, line 46) and having a center section (5) and spaced side sections (horizontal legs near reference numeral 1 in Fig. 1) which are each respectively connected at one end to the center section (5) and disposed to extend in opposite directions from the center section. The center section (5) has an attachment assembly formed therein for releasable attachment to the collar button (col. 1, lines 53-55). Each of the side sections has a resilient holding member (downwardly extending arms 3) disposed for

operative association with the collar as in claims 1 and 23. Each holding member (3) comprises an elongated strip formed from its associated side section, with one end connected to the side section (i.e. at the uppermost corners of the device, Fig. 1, where the horizontal legs and downwardly extending arms meet) and with the other end (7) being a free end remote from the connected end. The remote end (7) is disposed to engage the outer face of the collar (i.e. the remote ends 7 are inserted into the fabric of the collar and thus are adapted to be inserted to a depth as desired by the user, including a depth which extends through to the outer surface of the collar; thus they are "disposed" as claimed). The elongated strip of the holding member has a convoluted shape (see 4 in Fig. 1) as in claims 5 and 27 and which is S-shaped as in claims 6 and 28. The body has an arcuate shape in the lengthwise direction (see arcuate shape 5 or arcuate shape at 10). The body has an arcuate shape transverse to the lengthwise direction (see arcuate shape formed by the round circumference of the wire). Regarding claims 12 and 34, Fig. 2 of Ashley shows the upper portion of each holding member 3 which is in the same plane as the side sections (i.e. the horizontally extending members near reference numeral 1), with the portions 10 and 7 being above and below this plane.

Regarding claims 50, 55, and 57, Ashley discloses a generally unitary body made of a resilient material having a center section (5) and at least two spaced side sections, the spaced side sections each respectively connected at one end to the center section. Each of the spaced side sections has at least one first spaced arm (horizontally extending arm near reference numeral 1 in Fig. 1, extending from each

side of portion 5). A second spaced arm (3) extends in opposite direction from the center section and is regarded as "spaced" from the first arm in that it is bent downwardly at a 90 degree angle (i.e. the first and second arms do not touch along their lengths and thus are "spaced"). The first spaced arm is disposed for engagement with the inner face of the collar, while the second spaced arm is disposed for engagement with the outer face of the collar (i.e. the remote ends 7 are inserted into the fabric of the collar and thus are adapted to be inserted to a depth as desired by the user, including a depth which extends through to the outer surface of the collar; thus they are "disposed" as claimed). The center section has an attachment for releasably connection to the collar button (see 5 and col. 1, lines 53-55). The first and second spaced arms are disposed in side by side relationship (i.e. are side by side connected in series). Regarding claims 53, 54, and 60, the first arm is curved at its end (i.e. where it meets the downwardly extending arm 3) or alternatively is curved around its circumference (since it has the rounded shape of a wire). The second arm is curved along its length at 4 and at 10.

10. Claims 1-3, 8-10, 14, 23-25, 30-32, 43, 44, 48, and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by Taimisto (US 3,760,994).

Taimisto discloses a collar protector including a body made of resilient plastic material and having a center section (T) and spaced side sections (comprising area encompassed by regions R, K) which are each respectively connected at one end to the center section and disposed to extend in opposite directions from the center section.



The center section has an attachment assembly (H) formed therein for releasable attachment to the collar button. The attachment assembly H includes an inwardly extending cutaway section with a wide outer end and a restricted inner end (see Figs. 2, 5, and 6). Each of the side sections has a resilient holding member (bulges K) disposed for operative association with the collar as claimed. Regarding claims 3, 14, 25, and 43, Taimisto discloses that the body is constructed from plastic; since plastic is a polymer material, the recitation of these claims is met. The body has an arcuate shape in the lengthwise direction of the collar protector (see Fig. 7) and an arcuate shape transverse to the lengthwise direction (see Figs. 3 and 9). The body has a three dimensional shape as in claims 10 and 32. Regarding claim 43, the center section and a first portion of each of the side sections are disposed in a first plane (see portions of the side sections which are not part of the bulge K, i.e. portions closer to the split H and portions above and below the bulge, at the upper and lower edges of the device, as seen in Fig. 3). This plane is curved in the longitudinal direction as in claim 44 (see Fig. 9) and is arcuate as in claim 48. The holding members have a portion disposed above the first plane (see Figs. 3 and 9) as in claim 43. Taimisto discloses the combination of a collar protector and a garment having a collar as in claim 49 (see Fig. 1).

11. Claims 1, 3, 8, 9, 10, 14, 23, 25, 30, 31, 32, 43, 44, 47, 48, and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by Macrides (US 3,072,306).

Macrides discloses a collar protector including a body made of resilient plastic material and having a center section and spaced side sections (12,13) which are each

Art Unit: 3765

respectively connected at one end to the center section and disposed to extend in opposite directions from the center section. The center section has an attachment assembly (slot 11) formed therein for releasable attachment to the collar button. The slot 11 forms an inwardly extending cutaway section as in claim 14. Each of the side sections has a resilient holding member (14,15) disposed for operative association with the collar as claimed. Macrides discloses that the body is constructed from plastic; since plastic is a polymer material, the recitation of the body being formed of a polymer material is met by Macrides. The body has an arcuate shape in the lengthwise direction of the collar protector (see Figs. 1 and 2) and an arcuate shape transverse to the lengthwise direction (see shaped of elements 14,15). The body has a three dimensional shape as in claims 10 and 32. Regarding claim 43, the center section and a first portion of each of the side sections are disposed in a first plane. This plane is curved in the longitudinal direction as in claim 44 and is arcuate as in claim 48. The holding members 14,15 have a portion disposed above the first plane (see Fig. 3) as in claim 43. The body portion has downwardly extending tabs on each side of the slot 11 (see Figs. 1 and 2), either one of these tabs forming the claimed tab which extends away from the center portion as in claim 47. Macrides discloses the combination of a collar protector and a garment having a collar as in claim 49 (see Fig. 2).

12. Claims 1, 4, 23, 26, 50-52, and 55-59 are rejected under 35 U.S.C. 102(b) as being anticipated by Teague (US 3,107,830).

Teague discloses a collar protector including a body made of resilient material and having a center section and spaced side sections (18) which are each respectively connected at one end to the center section and disposed to extend in opposite directions from the center section. Each of the side sections has a resilient holding member (15) disposed for operative association with the collar as claimed. Each holding member 15 comprises an elongated strip formed from its associated side section, with the elongated strip being connected at one end to the side section and having a free end remote from the connected end, disposed to engage the outer face of the collar (see Fig. 1), as in claims 4 and 26. The center section has an attachment assembly (folded over portions 20a, 20b) formed therein. The folded over portions 20a, 20b function to hold the collar support in place over the collar button (see button in Fig. 1). Since the collar protector is held in contact with the button and secured in this position, the attachment functions to attach to the button to the extent claimed in the functional limitation.

Regarding claims 50, 55, and 57, Teague discloses a generally unitary body made of a resilient material having a center section and at least two spaced side sections, the spaced side sections each respectively connected at one end to the center section (Figs. 1 and 2). Each of the spaced side sections has at least one first spaced arm (18). A second spaced arm (15) extends in opposite direction from the center section. The second spaced arm is spaced from the first spaced arm by means of slit 14 (and also by the collar, which extends therebetween in use). The first spaced arm 18 is disposed for engagement with the inner face of the collar, while the second spaced arm

Art Unit: 3765

15 is disposed for engagement with the outer face of the collar (see Fig. 1). The first and second spaced arms are disposed in side by side relationship as claimed.

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 3, 10, 13, 14, 20, 21, 22, 25, 32, 35, 43, 45, 46, and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ashley (US 2,562,519) in view of Manaster (US 2,304,464).

Ashley discloses a collar protector as claimed, however the body of the device is not disclosed as made of polymer or plastic material. Ashley merely discloses that the device is made of wire. Manaster discloses a collar protector made of a wire element which is encased in a plastic coating (page 1, col. 1, lines 7-11 and col. 2, lines 5-9). Manaster teaches that this plastic coating prevents soiling of the shirt fabric when the collar stay is applied thereto (pg. 1, col. 1, lines 10-11). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the wire of Ashley with a plastic coating in order to prevent soiling of the shirt fabric, as taught by Manaster. It is noted that by forming the body of the collar protector of Ashley out of plastic coated wire, the limitations of claims 3 and 25 are met since plastic is a polymer material; claims 10 and 32 are met since the body is thereby constructed of

Art Unit: 3765

plastic material and has a three dimensional shape; and claims 13 and 35 are met since the body is constructed of plastic material and has an arcuate shape and the holding members have an S shape (at 4).

Regarding claims 14 and 43, Ashley discloses a collar protector including a body made of resilient material (col. 1, line 46), and when modified to have a plastic coating as taught by Manaster, has a body "made of polymer material". As set forth above, the device has a center section (5) and spaced side sections (horizontal legs near reference numeral 1 in Fig. 1) which are each respectively connected at one end to the center section (5) and disposed to extend in opposite directions from the center section. The center section (5) has an attachment assembly formed therein for releasable attachment to the collar button (col. 1, lines 53-55). The bent shape forms an inwardly extending "cutaway section" to the extent claimed. Each of the side sections has a resilient holding member (downwardly extending arms 3) disposed for operative association with the collar. The elongated strip of the holding member has a convoluted shape (see 4 in Fig. 1) and which is S-shaped. The body has an arcuate shape in the lengthwise direction (see arcuate shape 5 or arcuate shape at 10). The body has an arcuate shape transverse to the lengthwise direction (see arcuate shape formed by the round circumference of the wire). Fig. 2 of Ashley shows the upper portion of each holding member 3 which is in the same plane as the side sections (i.e. the horizontally extending members near reference numeral 1), with the portions 10 and 7 being above and below this plane as in claims 21, 43, and 45.

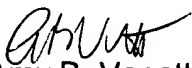
**Conclusion**

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy B. Vanatta whose telephone number is 703-308-2939. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Amy B. Vanatta  
Primary Examiner  
Art Unit 3765

March 31, 2004